

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.**

CRIMINAL APPEAL NO. 196 OF 1996

The State of Maharashtra

..... Appellant.

versus

1. Babalal Adam Satvilkar	)
2. Kasam Usman Navlekar	)
3. Noormahamad Abbas Nawelkar	)
4. Akbar Usuf Satwilkar	)
5. Hamid Usuf Satwilkar	)
6. Latif Yusuf Satwilkar	)
7. Husen Yakub Nawlekar	)
8. Usuf Adam Satwilkar	)
9. Abdul karim Babalal Satwilkar)	)
10. Karim Hasan Batwale	)
11. Umar Imam Nawlekar	)
12. Hamid Imam Nawlekar	)
13. Usuf Hussein Nawlekar	)
14. Abbas Mahamad Navalekar	).... Respondents.

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Shri A.M.Shringarpure APP for State.
None for the respondents.

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**CORAM ; V.G.PALSHIKAR &
R.C. CHAVAN, JJ.**

DATED; 11TH JULY, 2005

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the judgment dated 31-10-1995 passed by the Additional Sessions Judge, Sawantwadi in Sessions Case No. 26 of 1992, the appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate

appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution case is that there were fraction between the Muslim community in village Nandgaon. Taluka Kankavli, District Sindhudurg. This rift led on frequent quarrels between the two, particularly for the reason of some riot in the rituals of Moharam in the village. In the year 1991 the Moharam started on 13th July and ended on 25th July 1991. The accused persons around 9 O' clock in the morning left the mosque and following an altercation between the group assaulted the complainant and his group, as a result of which the complainant filed an FIR before the police for offence under section 307 and 148 read with 149 of IPC. Investigation was carried out and the accused persons were prosecuted. In all 14 accused persons were prosecuted and the prosecution led evidence of 11 witnesses to prove its case that the accused persons with the common object of causing hurt, assaulted the complainant and his party and some persons were injured in that assault. The learned trial Judge on appreciation of this evidence of 11 witnesses and other

documentary evidence like injury certificate, panchanama etc. came to the conclusion that the prosecution has failed to prove the guilt of the accused. He therefore proceeded to acquit the accused persons of all the charges. It is this order of acquittal, which is challenged in this appeal by the State.

4. P.w.1 Husein Ismail Navlekar is the person who has lodged the complaint. He has been examined to prove the complaint. He proved the complaint and admitted in the examination-in-chief itself that except the accused nos. 11 to 14 rest of the accused did nothing. In view of this candid admission, the learned trial Judge found that the prosecution has failed to make out any case of formation of unlawful assembly and that unlawful assembly doing something in furtherance of that common object.

5. P.w.2 Hamid has also given his version as to how the assault took place and he has referred to accused Nos.3,11,12 and 13 attributing some overt-act to them. He also gives reference only to four accused persons. It will thus be seen that P.w.s. 1 and 2 both referred to accused nos.11, 12 and 13. The name of accused no.3 has not mentioned by P.w.1 as has been done by P.w.2.

P.w.3 Imam mentions the overt act only by accused no.3. Similar is the case of P.w.4 Kutubuddin, P.w.5 Kasam, P.w.7 Ibrahim, P.w.8 Usman and P.w.9 Shahabuddin. None of them mentions more than four persons when mostly though mention about 2/3 persons. It is thus clear that none of the witnesses have stated about the presence of five or more persons at that time and that without being basic ingredients of the defence of unlawful assembly, the prosecution has miserably failed to prove any unlawful assembly in this case. The question of unlawful assembly having common object therefore cannot come even on the other accused persons. The entire evidence of these witnesses concerned humiliate their say varied and contradictory and that it is impossible for an ordinary prudent man to come to any definite conclusion as to who did what in the assault which took place. Hence the participation itself becomes doubtful.

6. The learned Judge has considered this aspect in great details and it can be very easily inferred from the evidence as reappreciated by us that none of the witnesses referred to, at any point of time, more than four persons as having alleged some overt act or the other in relation to the persons assaulted. There is thus total failure on the part of the prosecution to

prove the charge of formation of any unlawful assembly. The deposition of these witnesses also does not give rise to any definite position as to what injury was caused on each accused. Consequently it is very difficult to reach any conclusion as regards this unlawful assembly, the acts as contemplated by section 307 IPC. That section requires assault or injury which intend to commit murder. None of the injuries caused which is not proved as such would result or likelihood of certain death.

7. The learned Judge has also considered in detail, the relevant case law on the point for coming to the conclusion that the accused required to be convicted. The scrutiny of the judgment impugned will show that appreciation of evidence was correctly done, and law was correctly applied, and the learned Judge has given cogent reason for coming to the conclusion of acquitting the accused as ordered in the circumstances. We are in respectful agreement to the findings as recorded by the learned Judge. In the result therefore, there is no case for interference. The appeal fails and it is dismissed.